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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

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DEC 23 1996
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Policy and Rules Concerning)
the Interstate, Interexchange)
Marketplace)
)
Implementation of Section 254(g))
of the Communications Act of 1934,)
as amended)

CC Docket No. 96-61

DOCKET FILE COPY ORIGINAL

**PETITION FOR RECONSIDERATION
OF THE
AMERICAN PETROLEUM INSTITUTE**

The American Petroleum Institute (API) hereby submits this limited Petition for Reconsideration of one aspect of the Second Report and Order,^{1/} requesting the Federal Communications Commission (Commission) to detariff international services when these services are bundled with domestic services in negotiated, customer-specific service arrangements (hereinafter referred to as "bundled international offerings"). Consistent with the Order, detariffing bundled international offerings will "further

^{1/} In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Second Report and Order, FCC 96-424 (released October 31, 1996) (hereinafter "the Order").

the pro-competitive, deregulatory objectives of the 1996 Act by fostering increased competition in the market for interstate, domestic, interexchange telecommunications services."^{2/}

The Commission is respectfully requested to reconsider its conclusion that nondominant IXCs must continue to file tariffs for bundled international offerings. Specifically, the Commission is urged to reconsider its conclusion that there is insufficient record evidence to exercise regulatory forbearance with respect to bundled international offerings.^{3/} The matter was raised expressly in the Notice,^{4/} and, as discussed below, addressed in Comments filed in response to the pleading. International services are part and parcel of many negotiated service arrangements, and there is no rational basis not to detariff these international offerings.

^{2/} Order at para. 4. The "1996 Act" refers to the Telecommunications Act of 1996, Pub.L.No. 104-104, 110 St. 56.

^{3/} The conclusions which are subject to this Petition for Reconsideration are addressed in Section II(E) of the Order, paragraphs 94 - 99. While the pro-competitive, deregulatory policy of the 1996 Act may also support the detariffing of the international portions of commercial mobile radio service (CMRS) services, API's Petition for Reconsideration does not encompass the Commission's decision on the CMRS issue, which is addressed in paragraph 100 of the Order.

^{4/} *Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended*, CC Docket No. 96-61, Notice of Proposed Rulemaking, 11 FCC Rcd 7141 (1996) (hereinafter Notice) at para. 33.

**I. THIS PROCEEDING IS THE APPROPRIATE FORUM IN WHICH TO
DETARIFF THE INTERNATIONAL PORTION OF BUNDLED OFFERINGS**

The globalization of the Nation's economy is reflected in the demand for international telecommunications. Based on the tariffs on file with the Commission, there are few multiyear AT&T Contract Tariffs or Tariff 12s, Sprint Custom Network Service Arrangements and MCI Special Customer Arrangements, in excess of \$2-\$3 million that do not include international services; the possible exception might be those for firms with predominantly domestic inbound calling. Moreover, the Commission's finding of AT&T as nondominant with respect to international switched services, which occurred after issuance of the Notice but prior to closure of the Comment period,^{5/} provides the essential policy support for detariffing bundled international offerings.

Bundled international offerings have been part of negotiated service agreements for the duration of the current decade. A separate proceeding will not adduce additional record evidence that will further enhance the record or better inform the Commission with respect to the merits for including bundled international offerings.

^{5/} *Motion of AT&T Corp. To be Declared Non-Dominant for International Service*, Order, FCC 96-209 (rel. May 14, 1996).

At another level, API is perplexed with the Commission's deferring detariffing of international bundled offerings premised on the need for further inquiry into the competitiveness of international services. International service may not be as "competitive" as domestic services because the latter are being provided at rates much closer to "cost" than the former. It is undeniable that international accounting rates are inflated and therefore promote "inflated" retail rates. But it does not follow, that the market for international bundled offerings is not fully competitive. Many users would argue a similar point with regard to interstate access. The rates for these services are well above competitive cost levels. Yet, these "above cost" access rates do not implicate the competitiveness of the domestic interexchange services. Thus, the basis for deferral is not apparent.

II. THE STATUTORY CRITERIA ARE SATISFIED

In its Order, the Commission concluded that, under Section 10 of the 1996 Act, it was required to forbear from applying Section 203 tariff filing requirements to interstate, domestic, interexchange services offered by nondominant IXC's, since three statutory criteria were

satisfied.^{6/} Section 10 provides, in pertinent part, that the Commission

shall forbear from applying any regulation or any provision of this Act to a telecommunications carrier or telecommunications service . . . if the Commission determines that -

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable, and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.^{7/}

The policy considerations that support the Commission's conclusions with respect to the three statutory criteria of Section 10 apply with equal force to bundled international offerings.

A. Tariffing International Services in Bundled Offerings Is Not Necessary To Ensure Just And Reasonable Rates And Practices.

As the Commission has repeatedly recognized, it is the market, not tariffs, which constrains prices and practices for nondominant IXCs: "market forces effectively discipline

^{6/} Order at paras. 28, 43, 66, and 77.

^{7/} In making the public interest determination, the 1996 Act requires the Commission to consider whether forbearance will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services.

nondominant carriers even in the absence of a dominant carrier."^{1/} These market forces operate equally when large end-user customers include international offerings as a component of their customer-specific telecommunications arrangements.

Nothing in the record supports a finding that nondominant IXCs can successfully impose upon end-users rates or terms and conditions with respect to bundled international services that violate Section 201 or 202 of the Communications Act. While there may be a floor on the rates for international service, this floor is attributable to inflated accounting rates; any attempt by an interexchange carrier to charge such customers unjust or unreasonable rates, or to impose discriminatory or unjust or unreasonable terms and conditions, with regard to bundled international services, will be immediately apparent in the carrier's response to an RFP. Any IXC attempting to impose "above market" rates for international services will likely not receive the award.^{2/} The record does not support either the inference or conclusion that nondominant carriers or the

^{1/} Order at para. 24.

^{2/} The Commission reached a similar conclusion with respect to the interstate, domestic, interexchange market, finding that consumers find the services provided by interexchange carriers to be close substitutes, and that consumers are likely to switch carriers in order to obtain lower prices or more favorable terms and conditions. Order at para. 21. These consumer predilections are not confined to those calls that terminate within the United States' borders.

principal interexchange services carriers pursuing the business of large telecommunications end-users enjoy more market power with respect to the international services than they do with respect to the interstate, domestic, interexchange portion of that offering.

In this competitive environment, tariffs are not necessary to ensure that large end-users obtain information regarding the carrier's rates, terms, and practices. The record is devoid of either evidence or policy supporting a need to retain tariffs for these sophisticated customers. Again, these considerations are not limited to domestic offerings, but extend to bundled international offerings as well.

B. Tariffing The International Portion Of Bundled Offerings Is Not Necessary To Protect Consumers.

The record is replete with support for the Commission's conclusions that relieving nondominant IXC's of the obligation to comply with an obsolete regulatory constraint - tariffing - will promote competition and, ultimately, offer consumers greater protections than they enjoy today. API's review of the record did not reveal substantial differentiation in Comments on the competitiveness of detariffed, domestic-only customer-specific arrangements and such arrangements which include international services. Moreover, whether detariffed or not, end users will not look

to carriers for comprehensive service arrangements unless the carriers possess the network capabilities, resources and reliability of the principal interexchange carriers. Detariffing is a neutral factor with respect to intercarrier competitiveness.

Under the Order, end-users that negotiate customer-specific arrangements encompassing both domestic and international telecommunications services must contend with an artificial partition between tariffed and detariffed contract provisions. This "Chinese Wall" ensures only that users remain tied to the tired tariff regime which the Commission has found inimical to the public interest.

C. Detariffing The International Portion Of Bundled Offerings Is Consistent With The Public Interest.

In concluding that the mandatory detariffing of virtually all interstate, domestic, interexchange services offered by nondominant IXCs is in the public interest, the Commission explained that "a regime without nondominant interexchange carrier tariffs for interstate, domestic, interexchange services is the most pro-competitive, deregulatory system."^{10/} As the bases for its finding, the Commission correctly observed that mandatory detariffing will:

^{10/} Order at para. 52.

- enhance competition among providers of detariffed services;
- promote competitive market conditions; and
- achieve other objectives that are in the public interest, including eliminating the possible invocation of the filed rate doctrine by nondominant IXC's, and establishing market conditions that more closely resemble an unregulated environment.

Each of these bases is equally applicable to the detariffing of bundled international offerings - particularly the specific public interest objectives concerning possible invocation of the filed rate doctrine and the establishment of market conditions that more closely resemble an unregulated environment.

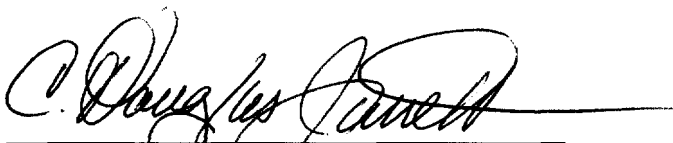
In the Order, the Commission notes that "requiring tariffs . . . impedes competition by preventing customers from seeking out or obtaining price and service arrangements tailored to their needs."^{11/} The Commission's decision to retain a tariffing requirement for bundled international offerings is inconsistent with its recognition that a detariffed environment is likely to spur carrier responsiveness and result in improved opportunities for consumers to obtain arrangements tailored to their needs.

^{11/} Order at para. 54.

That decision, moreover, is at odds with the Commission's discussion regarding the benefits associated with eliminating carriers' possible invocation of the filed rate doctrine.^{12/} The record affirms that end-users that negotiate customer-specific arrangements to satisfy their telecommunications needs are clearly among those consumers that have an interest in preserving reasonable commercial expectations.^{13/}

WHEREFORE, THE PREMISES CONSIDERED, The American Petroleum Institute respectfully requests that the Commission detariff the international portions of bundled domestic and international service service offerings provided by nondominant interexchange carriers.

Respectfully submitted,
AMERICAN PETROLEUM INSTITUTE



Wayne V. Black
C. Douglas Jarrett
Susan Hafeli
KELLER AND HECKMAN LLP
1001 G Street, N.W.
Washington, D.C. 20001

Dated: December 23, 1996

^{12/} Order at para. 55.

^{13/} See, for example, API's Initial Comments (Apr. 25, 1996) at 6 - 11.

CERTIFICATE OF SERVICE

I, Cassandra L. Hall, a secretary in the law firm of Keller and Heckman, hereby certify that a copy of the foregoing was served by hand-delivery on this 23rd day of December, 1996, to the following:

Rodney L. Joyce
Ginsburg, Feldman and Bress
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

Ellen G. Block
James S. Blaszak
Henry D. Levine
Levine, Blaszak, Block & Boothby
1300 Connecticut Ave., N.W. Suite 500
Washington, D.C. 20036

Mary E. Newmeyer
Alabama Public Service Commission
100 N. Union Street
P.O. Box 991
Montgomery, AL 36101

John W. Katz
Office of the State of Alaska
444 N. Capitol St., N.W.
Suite 336
Washington, D.C. 20001

Robert M. Halperin
Crowell & Moring
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004

S. Joseph Door
American Computer and Electronics Corp.
209 Perry Parkway
Gaithersburg, MD 20877

Roy E. Hoffinger
Mark C. Rosenblum
AT&T Corp.
Room 324511
295 North Maple Avenue
Basking Ridge, NJ 07920

Glenn S. Richards
Stephen J. Berman
Fisher Wayland Cooper
Leader & Zaragoza L.L.P.
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, D. C. 20036

Charles H. Helein
Helein & Associates, P.C.
8180 Greensboro Drive
Suite 700
McLean, VA 22102

Gary L. Phillips
Ameritech
1401 H Street, N.W.
Suite 1020
Washington, D.C. 20005

Lon C. Levin
AMSC Subsidiary Corporation
10802 Park Ridge Blvd.
Reston, VA 22091

Bettye Gardner
The Association for the Study of
Afro-American Life and History, Inc.
1407 Fourteenth St., N.W.
Washington, D.C. 20005-3704

Eileen Seidowitz
Audits Unlimited, inc.
139-15 83rd Avenue
Briarwood, NY 11435

John F. Beasley
William B. Barfield
Jim O. Llewellyn
BellSouth
1155 Peachtree St., N.E.
Suite 1800
Atlanta, GA 30309-2641

Cheryl Lynn Schneider
Joan M. Griffin
BT North America, Inc.
North Building, Suite 725
601 Pennsylvania Ave., N.W.
Washington, DC. 20004

Ann P. Morton
Cable & Wireless, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Bruce D. Jacobs
Glenn S. Richards
Fisher Wayland Cooper
Leader & Zaragoza L.L.P.
2001 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20006

Albert H. Kramer
Robert F. Aldrich
Dickstein, Shapiro & Morin, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526

Edward D. Young, III
Michael E. Glover
Bell Atlantic
1320 North Court House Road
8th Floor
Arlington, VA 22201

Charles P. Featherstun
David G. Richards
BellSouth
1133 - 21st Street, N.W.
Washington, D.C. 20036

Mark P. Sievers
William B. Wilhelm, Jr.
Swidler & Berlin, Chtd.
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Danny E. Adams
Edward A. Yorkgitis, Jr.
Kelley Drye & Warren
1200 - 19th Street, N.W.
Washington, D.C. 20036

Randolph J. May
Timothy J. Cooney
Sutherland, Asbill & Brennan
1275 Pennsylvania Ave., N.W.
Washington, D.C. 20004-2404

Mark W. Johnson
CBS Inc.
600 N. Hampshire Ave., N.W.
Suite 1200
Washington, D.C. 20037

Wayne Leighton
James Gattuso
Citizens for a Sound Economy Foundation
1250 H Street, N.W.
Suite 700
Washington, D.C. 20005

Robert A. Mazer
Albert Shuldiner
Vinson & Elkins
1455 Pennsylvania Ave., N.W.
Washington, D.C. 20004-1008

Robert J. Aamoth
Jonathan E. Canis
Reed Smith Shaw & McClay
Suite 1100 - East Tower
1301 K Street, N.W.
Washington, D.C. 20005

Bradley Stillman
Gene Kimmelman
Consumer Federation of America
1424 - 16th Street, N.W.
Suite 604
Washington, D.c. 20036

Charlene Vanlier
Capital Cities/ABC, Inc.
21 Dupont Circle
6th Floor
Washington, D.c. 20036

Winston R. Pittman
Chrysler Minority Dealer Assn.
27777 Franklin Road
Southfield, MI 48034

Jeffrey A. Campbell
Compaq Computer Corporation
1300 I Street, N.W.
Suite 490E
Washington, D. C. 20005

Genevieve Morelli
Competitive Telecommunications Assn.
1140 Connecticut Ave., N.W.
Suite 220
Washington, D.C. 20036

John W. Petit
Sue W. Bladek
Richard J. Arsenault
Drinker Biddle & Reath
901 - 15th Street, N.W.
Washington, D.C. 20005

Consumers First
P.O. Box 2346
Orinda, CA 94563

Paul R. Schwedler
Carl Wayne Smith
Telecommunications, DoD
Defense Information Systems Agency
701 S. Courthouse Road
Arlington, VA 22204

Thomas K. Crowe
Michael B. Adams, Jr.
Law Offices of Thomas K. Crowe, P.C.
2300 M Street, N.W.
Suite 800
Washington, D.C. 20037

Stuart Zimmerman
Fone Saver, L.L.C.
733 Summer Street
Suite 306
Stamford, CT 06901-1019

Kathy L. Shobert
General Communication, Inc.
901 - 15th Street, N.W.
Suite 900
Washington, D.C. 20005

Snavelly King Majoros
O'Connor & Lee, Inc.
1220 L Street, N.W.
Washington, D.C. 20005

Herbert E. Marks
Jonathan Jacob Nadler
Thomas E. Skilton
Adam D. Krinsky
Squire, Sanders & Dempsey
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20044

Dana Frix
Morton J. Posner
Swidler & Berlin, Chtd.
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Cynthia Miller
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

Michael J. Shortley, III
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

Vincent L. Crivella
Michael J. Ettner
General Services Administration
18th & F Sts., N.W.
Room 4002
Washington, D.C. 20405

Gail L. Polivy
GTE Service Corporation
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036

Joseph P. Markoski
Marc Berejka
Squire, Sanders & Dempsey
1201 Pennsylvania Ave., N.W.
Washington, D.C. 20044

William H. Smith, Jr.
Mary Jo Street
Bureau of Rate and Safety Evaluation
Iowa Utilities Board
Lucas State Office Building
Des Moines, IA 50319

Catherine R. Sloan
Richard L. Fruchterman
Richard S. Whitt
WorldComm, Inc.
d/b/a LDDS WorldCom
1120 Connecticut Ave., N.W.
Suite 400
Washington, D.C. 20036

Michael Greenspan
MBG Telecom Software
370 Lexington Avenue
New York, NY 10017

Andrew D. Lipman
Erin M. Reilly
Swidler & Berlin, Chtd.
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

National Association of Commissions
for Women
1828 L Street, N.W.
Washington, D.C. 20036

Lee M. Weiner
Douglas W. Kinkoph
LCI International Telecom Corp.
8180 Greensboro Drive
Suite 800
McLean, VA 22102

Lawrence C. St. Blanc
Gayle T. Kellner
Louisiana Public Service Commission
P.O. Box 91154
Baton Rouge, LA 70821-9154

Donald J. Elardo
Frank W. Krogh
Larry A. Blosser
Mary J. Sisak
MCI Telecommunications Corp.
1801 Pennsylvania Ave., N.W.
Washington, D.C. 20006

Eric Witte
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102

Aliceann Wohlbruck
National Association of
Development Organizations
444 North Capitol St., N.W.
Suite 630
Washington, D.C. 20001

Paul Rodgers
Charles D. Gray
James Bradford Ramsay
National Association of
Regulatory Utility Commissioners
1102 ICC Building
P.O. Box 684
Washington, D.C. 20044

Earl Pace
National Black Data Processors Assn.
1250 Connecticut Ave., N.W.
Suite 600
Washington, D.C. 20036

National Hispanic Council on the Aging
2713 Ontario Road
Washington, D.C. 20009

David Cosson
L. Marie Guillory
National Telephone Cooperative Assn.
2626 Pennsylvania Ave., N.W.
Washington, D. C. 20037

Campbell L. Ayling
Donald C. Rowe
NYNEX
1111 Westchester Avenue
White Plains, NY 10604

Betty D. Montgomery
Duane W. Luckey
Steven T. Nourse
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, OH 43215-3793

John Crump
National Bar Association
1225 - 11th Street, N.W.
Washington, D.C. 20001-4217

Howard Monderer
National Broadcasting Company, Inc.
1299 Pennsylvania Ave., N.W.
11th Floor
Washington, D.C. 20004

Margot Smiley Humphrey
Koteen & Naftalin, L.L.P.
1150 Connecticut Ave., N.W.
Suite 1000
Washington, D. C. 20036

John Abernathy
Network Analysis Center, Inc.
45 Executive Drive, Suite GL3
Plainview, NY 11803

Robert S. Tongren
Andrea M. Kelsey
David C. Bergmann
Karen J. Hardie
Patricia A. Tanner
The Office of the Ohio Consumers' Counsel
77 S. High Street, 15th Floor
Columbus, OH 43266-0550

Lisa M. Zaina
Stuart Polikoff
OPASTCO
21 Dupont Circle, N.W.
Suite 700
Washington, D.C. 20036

Marlin D. Ard
John W. Bogy
Pacific Telesis Group
140 New Montgomery Street
Room 1530A
San Francisco, CA 94105

Paraquad
311 North Lindbergh
St. Louis, MO 63141

Alan Kohler
Veronica A. Smith
John F. Povilaitis
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Mark A. Scheraga
Scheraga and Sheldon Associates
39-40 Broadway
Fair Lawn, NJ 07410

Dina M. Gallo
Systems Design & Development, Inc.
Atrium Financial Center
1515 N. Federal Highway
Suite 212
Boca Raton, FL 33432

William B. Goddard
Telecommunications Information Services
4613 West Chester Pike
Newtown Square, PA 19073

Margaret E. Garber
Pacific Telesis Group
1275 Pennsylvania Ave., N.W.
Washington, D.C. 20004

Philip F. McClelland
Irwin A. Popowsky
Office of Attorney General
Pennsylvania Office of Consumer
Advocate
1425 Strawberry Square
Harrisburg, PA 17120

James D. Ellis
Robert M. Lynch
David F. Brown
SBC Communications, Inc.
175 E. Houston, Room 1254
San Antonio, TX 78205

Leon M. Kestenbaum
Jay C. Keithley
Michael B. Fingerhut
Sprint Corporation
1850 M Street, N.W.
11th Floor
Washington, D.C. 20036

Natalie Marine-Street
Telco Communications Group, Inc.
Long Distance Wholesale Club
4219 Lafayette Center Drive
Chantilly, VA 22201

Cheryl A. Tritt
Joan E. Neal
Morrison & Foerster, L.L.P.
2000 Pennsylvania Ave., N.W.
Suite 5500
Washington, D.C. 20006

Samuel A. Simon
Telecommunications Research
and Action Center
901 - 15th St., N.W.
Suite 230
Washington, D.C. 20005

Thierry Zerbib
Telesoft Corp.
Monterey Plaza
3216 North 3rd Street
Phoenix, AZ 85012

Bertram W. Carp
Turner Broadcasting, Inc.
820 First St., N.W., Suite 956
Washington, D.C. 20002

Mary McDermott
Linda Kent
Charles D. Cosson
United States Telephone Association
1401 H Street, N.W.
Suite 600
Washington, D.C. 20005

Robert B. McKenna
Coleen M. Egan Helmreich
Dan L. Poole
U.S. West, Inc.
1020 - 19th Street, N.W.
Suite 700
Washington, D.C. 20036

Michael G. Hoffman
Vartec Telecom, Inc.
3200 W. Pleasant Run Road
Lancaster, TX 75146

Charles C. Hunter
Hunter & Mow, P.C.
1620 I Street N.W.
Suite 701
Washington, D.C. 20006

L. Vincent Williams
Consumer Advocate Division
State of Tennessee
404 James Robertson Pkwy.
Suite 1504
Nashville, TN 37243


United HomeOwners Association
1511 K Street, N.W.
3rd Floor
Washington, D.C. 20005

Helen E. Disenhaus
Kathy L. Cooper
Swidler & Berlin, Chtd.
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007

Jeffrey L. Sheldon
Sean A. Stokes
UTC
1140 Connecticut Ave., N.W.
Suite 1140
Washington, D.C. 20036

Timothy R. Graham
Robert G. Berger
Joseph M. Sandri, Jr.
Winstar Communications, Inc.
1146 - 19th Street, N.W.
Washington, D.C. 20036

William H. Welling
Xiox Corporation
577 Airport Blvd.
Suite 700
Burlingame, CA 94010


Cassandra L. Hall

Dated: December 23, 1996